



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

To:	Citizens Gas & Electric
ID#:	IA0984589093
Break:	10.6
Other:	N/D

Michael Ohm
Attorney
Bell Boyd and Lloyd
70 West Madison
Chicago, Illinois 60602

re: Peoples Natural Gas Company
Council Bluffs, Iowa

Dear Mr. Ohm:

Enclosed for your review is a revised proposed administrative consent order reflecting the comments discussed in our August 26, 1992, conference call.

Please contact me at (913) 551-7278 regarding any comments you have on this proposal. I will send both you and Peterson Construction, Inc. a clean copy, without red lining and strikeouts, after you have had at least a couple days to identify any major disagreements with this version. While we show Peterson Construction as a corporation, it is not recorded as such with the Iowa Secretary of State. We would welcome any clarifying information you may have on the correct name or business type. Please include in the findings of fact to show Peterson Construction is a person.

Very Truly Yours,

Daniel J. Shiel
Assistant Regional Counsel

Enclosure

cc: ✓ Betty Berry
Karen Flournoy
Baerbel Schille

*File: Citizens Gas & Electric
Council Bluffs, IA*

Draft AO

30252084



Superfund

ATTORNEY WORK PRODUCT-- September 3, 1992
Prepared for Purposes of Negotiation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

In the Matter of:)

Peoples Natural Gas Company, and)
Peterson Construction, Inc.)

Respondents)

Proceedings under Sections)
104 and 122 of the Comprehensive)
Environmental Response,)
Compensation, and Liability)
Act of 1980 (42 U.S.C. §§ 9604)
and 9622).)

Docket No. VII-92-F-00__

ADMINISTRATIVE ORDER

ON CONSENT

ADMINISTRATIVE ORDER ON CONSENT

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I. PRELIMINARY STATEMENT

1. This Administrative Order on Consent is issued to Peoples Natural Gas Company and Peterson Construction, Inc. (hereinafter "~~Peoples~~" or "Respondents") pursuant to the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 9604 and 9622. The authority to issue such orders pursuant to Sections 104 and 122 of CERCLA was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 57 Federal Register 2,923, dated January 23, 1987, and was further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, dated April 16, 1984, and 14-14-C, dated September 13, 1987. This authority was subsequently redelegated to the Director, Waste Management Division, by EPA Delegation No. R7-14-14C, dated May 16, 1988.

2. By signing this Order, Respondents neither admit nor deny the findings of fact or the conclusions of law or determinations made herein; however, Respondents admits the jurisdiction of the EPA to issue and enforce the terms of this Order, agrees to undertake all actions required by the terms and conditions of this Order and consents to be bound by the requirements set forth herein.

II. STATEMENT OF PURPOSE

3. This Order requires Respondents to ~~investigate a site~~ perform certain work at the Site located at the corner of 7th

Street and 11th Avenue in Council Bluffs, Iowa. For convenience, this site will be referred to in this Order as the Citizens Gas and Electric Company Site or the Site. The location of ~~this facility~~ the Site is described in more detail in the findings of fact, below. ~~The Parties agree that this Order addresses only a site investigation at the Site, and that EPA may determine that additional response action is necessary at the Site.~~

III. PARTIES BOUND

4. This Order shall apply to and be binding upon Peoples, its Respondents, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for it. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order prior to the date such work is initiated.

5. No change in ownership or corporate status of Respondents or ownership of the Site shall in any way alter Respondents' responsibility to conduct the activities agreed to under this Consent Order.

IV. FINDINGS OF FACT

6. From approximately 1870 until 1930, the Site was used to manufacture town gas. Initially gas was manufactured from coal using the coal carbonization gasification method. Coal was cooked in ovens or retorts to produce gas and various gas by-products. These gases required treatment to remove tar, ammonia, "light oils" (i.e., xylene, toluene, ethylbenzene, and benzene), naphthalene, and sulfur compounds before use. After approximately 1882, gas was

manufactured from oil, rather than coal. By-product tars and carbon were produced along with the gas. A variety of oil-based feedstocks were used to produce gas, including kerosene, diesel oil and bunker C fuel oil. By-product tars were either refined into marketable products, such as creosote, road tars, fuels, and various pitches, or disposed of on site. Typical wastes associated with these gas production methods include spent oxide waste, tar residues, sludges, wastewater, ash, and phenolic and ammonia compounds.

7. The Site is located approximately 2 miles east of the Missouri River on the floodplain.

8. In 1989 Peoples Natural Gas Company conducted a Phase I preliminary investigation at the Site, which included soil borings and ground water sampling. This investigation included the installation of four ground water monitoring wells and on-site soil borings. Elevated levels of benzene, toluene, xylene, ethylbenzene, and cyanide were found in one of the monitoring wells. Benzene, toluene, ethylbenzene, and xylene were found in three of the eleven soil samples collected on site. The investigation also found indications that volatile organic compounds have migrated off site.

9. Peoples Natural Gas Company is a ~~former assumed name of~~ regulated public utility and a division of Utilicorp United, Inc., a ~~Missouri-Delaware~~ corporation. Peterson Construction, Inc. is a corporation authorized to do business in the state of Iowa.

10. Peoples Natural Gas Company owns ~~that the eastern~~ portion of the Site located as follows: Block 11, which is at the

northeast corner of South 7th and 11th Avenues (hereinafter for convenience referred to as "PNG's Property"). This portion of the Site is approximately 148 feet by 205 feet and is currently enclosed by a 6-foot-high chain link fence topped with barbed wire. A natural gas regulator station and laboratory, used by Peoples to test natural gas pipes, currently occupy the property PNG's Property.

11. Peterson Construction, Inc. owns ~~that~~ the western portion of the Site located as follows: Block 12, which is at the northwest corner of South 7th and 11th Avenues (hereinafter for convenience referred to as "Peterson's Property"). This portion of the Site is approximately 158 feet by 295 feet, and is entirely enclosed by a 6-foot-high chain link fence. The old gas manufacturing plant, which currently houses Peterson Construction, Inc.'s offices, repair shops and associated facilities, and purifier house, which are not currently in use, are still standing at this location the Peterson Property.

V. CONCLUSIONS OF LAW

12. Respondents ~~is a~~ are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. Each of the substances identified in paragraph 8 are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. Each of the substances identified in paragraph 8 has been or is threatened to be released into the environment at the Site as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

15. The Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Respondents ~~is the~~ ~~are~~ owners ~~or operator~~ of portions of the Site and each is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VI. DETERMINATIONS

17. Based upon the foregoing findings of fact and conclusions of law, the Director, Waste Management Division, EPA Region VII, has determined that:

a. EPA is authorized to act pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, to investigate the existence and extent of the release or threat of release, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health and welfare and the environment;

b. So long as Respondents ~~comply~~ ~~complies~~ with the requirements of this Order, including schedules set forth herein, such actions will be undertaken properly and promptly ~~by the owner or operator of the facilities involved~~; and

c. The actions required by this ~~Consent~~ Order are necessary response actions and are consistent with CERCLA and the National Contingency Plan.

VII. ORDER ON CONSENT

18. It is hereby agreed by the Parties that Respondents shall ~~conduct a Site Screening Investigation (SSI) at~~ ~~perform the tasks and submit deliverables with respect to the Site set forth in the Phase II Investigation Work Plan, attached to this Order as~~

~~Attachment I. to determine the extent of and further characterize surface and subsurface contamination at the Site. The SSI shall be designed to obtain information necessary (1) to determine whether the release or threatened release of any hazardous substance at the site presents any endangerment to human health or welfare or the environment, (2) to support decisions regarding the need for any further response actions at the Site, and (3) to determine whether hazardous substances have migrated from their original source or disposal location. In order to conduct this Site Screening Investigation, Respondent shall do the following:~~

~~a. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA for review and approval a Site Screening Investigation Work Plan, referred to for convenience as the SSI Work Plan. The SSI Work Plan shall include the following components:~~

~~(1) A Sampling and Analysis Plan, which describes in detail the sampling procedures and analytical methods that will be used to perform the SSI, including:~~

~~(a) Field Operations—a detailed description of all field work, including a description of the responsibilities of each worker on site, identifying who will take samples, supervise chain-of-custody procedures, maintain the field log book, and monitor the site for potential hazards.~~

- ~~(b) Sampling locations and rationale-- a site map depicting the number of samples and for each sample the sampling location, including depth, and media (e.g., soil, sediment, water) and a narrative explanation of the rationale for the number, location, and type of samples.~~
- ~~(c) Field quality control samples-- a detailed description of the number and type of field blank and duplicate samples to be collected for quality control purposes.~~
- ~~(d) Analytical and sample handling requirements-- a description of the specific analyses to be performed on each sample, and the preservation techniques, equipment, sampling devices, type of sampling containers, and chain-of-custody procedures to be used for each sampling episode. All such procedures shall be consistent with EPA Standard Operating Procedures, which should be referenced in the description.~~
- ~~(e) Sample delivery-- each laboratory to which samples will be delivered for analysis shall be identified.~~

~~(f) Format for reporting sample results-- in addition to providing all results of analyses in accordance with paragraph 22.6., a format for summarizing all sampling results in a table, identifying sample type, units, sample number, sampling location, sample collection criteria, method of sample collection, method of preservation, results of all field measurements, and analytical methods.~~

~~(2) A Health and Safety Plan, developed in accordance with 29 C.F.R. Part 1910, setting forth the requirements and procedures to be followed to protect the health and safety of all on-site personnel and the nearby public. The Health and Safety Plan shall include the following:~~

- ~~(a) the levels of protection necessary for each field activity;~~
- ~~(b) detailed instructions for routine operations;~~
- ~~(c) detailed instructions for emergency response activities;~~
- ~~(d) a description of any potential physical and chemical hazards and contingencies for escalating the level of protection;~~

~~and for emergency actions in case of
illness or injury.~~

~~(3) A plan for management of investigation derived
wastes, describing in detail plans for
managing investigation derived wastes such
that:~~

~~(a) the Site is in no worse condition after
the investigation than prior to the
investigation;~~

~~(b) the quantity of such wastes generated is
minimized;~~

~~(c) wastes posing no immediate threat to
human health or the environment are
removed from the site;~~

~~(d) wastes which do not require off-site
disposal or extended above-ground
containment remain on site; and~~

~~(e) applicable federal, state and local
requirements are complied with.~~

~~(4) A Quality Assurance/Quality Control (QA/QC)
Plan which describes all sampling and analysis
procedures to be followed to insure the
validity of the data obtained during the SSI.
The QA/QC Plan shall include the following:~~

~~(a) Trip blanks, which are used to detect any
contamination or cross-contamination~~

~~during handling and transport of the samples.~~

~~(b) Field blanks (equipment rinsate blanks) consist of Type I deionized water that is used to rinse decontaminated sampling equipment. The rinsate shall be collected and analyzed to detect any contamination from sampling equipment, cross-contamination from previously collected samples, or contamination from conditions during rinsing.~~

~~(c) Performance evaluation samples, provided by EPA, which are submitted for analysis along with site samples. The number of such samples will be determined by EPA, but will generally include a minimum of one sample per sampling day.~~

~~(5) A schedule for completing all SSI activities, including submittal of an SSI Report.~~

~~19. Upon approval of the SSI Work Plan by EPA, Respondent shall implement the SSI Work Plan as approved by EPA in accordance with the schedule set forth therein. All requirements of the SSI Work Plan, including the schedule, shall be enforceable as requirements of this Order.~~

19. The SSI Phase II Investigation Work Plan may be amended by the mutual written agreement of the parties. Any amendment to the Phase II Investigation Work Plan shall have as its effective

date, the date on which it has been signed by ~~both~~ all parties hereto. The amended ~~Phase II Investigation~~ Work Plan shall be incorporated into this Order.

20. ~~Within sixty (60) days of completion of sampling activities under the SSI~~ In accordance with the schedule in the ~~Phase II Investigation~~ Work Plan, Respondents shall submit to EPA for review and approval a ~~Screening Site~~ ~~Phase II Investigation~~ Report, which shall include a summary of the results of the investigation, including the following information:

a. A general site summary and history including the location of the site, identification of property boundaries, a discussion of the tasks and objectives of the ~~Screening Site~~ ~~Phase II Investigation~~.

b. A summary of the field sampling activities conducted at the site, including a site map on which sample numbers, media sampled, and sampling locations are identified, and a sample summary table identifying the sample number, depth at which it was collected, the number of aliquots, and date of collection.

c. A summary of the data resulting from the investigation, including a summary table showing the sample number, types of analyses performed (e.g., volatiles, semi-volatiles, etc.), sample detection limits, and sample results.

d. A narrative description of the results of the investigation and conclusions drawn therefrom, including a recommendation on the need for further investigation or other response action.

VIII. ADDITIONAL WORK

21. During the course of this investigation, EPA may determine that sampling, analysis, reporting or other tasks in addition to those specifically set forth in the Work Plan or this Order are necessary to satisfy the purposes of this Order. If EPA so determines, it will advise Respondents, in writing, of the nature of the additional tasks and the basis for EPA's determination that such additional work is necessary. Within ten (10) calendar days of receiving such notice from EPA, Respondents shall either advise EPA, in writing, that it will conduct the additional work or initiate dispute resolution in accordance with paragraph 33. If Respondents agree to conduct such additional work, within thirty (30) calendar days of receipt of EPA's notice, Respondents shall submit to EPA a revised Phase II Investigation Work Plan or an addendum to the Phase II Investigation Work Plan covering the additional work. If Respondents dispute the additional work, Respondents shall submit to EPA either a revised Phase II Investigation Work Plan or an addendum to the Phase II Investigation Work Plan covering whatever additional work is found to be appropriate upon conclusion ~~or if upon completion of the dispute resolution process it is determined that such work is necessary, within thirty (30) calendar days of receipt of EPA's notice or completion of the dispute resolution process, as appropriate, Respondent shall submit to EPA a revised investigation plan covering the additional work.~~ Respondents shall undertake, perform and complete all additional tasks, including providing such

documents and reports, in accordance with the standards, specifications and schedules determined or approved by EPA.

IX. REPORTING

22. Throughout the course of these activities, Respondents shall submit to EPA monthly progress reports. These reports shall include, at a minimum, the following:

a. A description of the actions completed during the reporting period towards compliance with this Order;

b. A description of all actions scheduled for completion during the reporting period which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

c. Copies of all data and sampling and test results and all other* laboratory deliverables received by Respondents during the reporting period; and

d. A description of the actions which are scheduled for completion during the following reporting period.

These reports shall be ~~due~~ mailed on or before the tenth day of the month following the month for which the report is submitted.

X. MONITORING AND QUALITY ASSURANCE

23. All samples analyzed pursuant to this Order shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the documents entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" (December 1990 and January 1991) and "USEPA Contract Laboratory Program Statement of Work for Inorganic

Analysis" (July 1988) (hereinafter "Contract Lab Statements of Work").

24. All sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analysis, documentation of sample collection, handling and analysis, as provided in the Phase II Investigation Work Plan. ~~described in the following documents:~~

a. ~~"NEIC Manual for Groundwater/Subsurface Investigations at Hazardous Waste Sites", Document No. EPA/330/9-81-002, and~~

b. ~~Contract Lab Statements of Work.~~

25. Laboratory deliverables for all analytical work performed pursuant to this Order, as specified in the Contract Lab Statement of Work,⁴ shall be submitted to EPA in accordance with the requirements of paragraph 22.c. ~~schedules set forth herein.~~ Any deviations from the procedures and methods set forth in these documents must be approved in writing by EPA prior to use.

26. Respondents shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan as approved by EPA for all sample collection and analysis performed pursuant to this Order.

27. All laboratories analyzing samples pursuant to this Order shall perform, at Respondents's expense, analyses of samples provided by EPA to demonstrate the quality of each such laboratory's analytical data as provided in the General Site Screening ~~Phase II Investigation Work Plan.~~

28. Respondents shall ensure that EPA representatives are allowed access, for auditing purposes, to all laboratories and personnel utilized by Respondents for sample collection and analysis and other field work.

XI. FORCE MAJEURE

29. Respondents shall perform the requirements of this Consent Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not foreseeable and beyond the control of Respondents, including its consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include unanticipated or increased costs of performance or changed economic circumstances.

30. Respondents shall notify EPA in writing ten (10) days after it becomes aware of events which Respondents knows or should know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondents's right to assert a force majeure.

31. If EPA determines that the delay has been or will be caused by a force majeure, the time for performance for that element of work, and other tasks the completion of which is dependent upon that element of work, shall be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. All such modifications of the schedule caused by a force majeure shall be made in accordance with paragraph 76 of this ~~Consent~~ Order. The schedule for those tasks which are not specifically altered by these modifications remains unchanged unless altered in accordance with paragraph 76. In the event EPA and Respondents cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, this dispute shall be resolved in accordance with the Dispute Resolution provisions of paragraph 33 of this ~~Consent~~ Order.

XII. DOCUMENT REVIEW AND APPROVAL

32. The following procedure will apply to the review and approval of the ~~SSI Phase II Investigation Work Plan, SSI Investigation Report~~ and any other plans, reports, or other documents submitted to EPA for review and approval, including plans and reports submitted pursuant to paragraph 21, above, pertaining to Additional Work. EPA will review each such document and notify Respondents, in writing, as to its approval or disapproval thereof. In the event EPA does not approve any such document, it will provide a written statement as to the basis of the disapproval. Within ~~thirty~~ (30) business days of receipt of the EPA comments, or such longer time period as agreed to by the Parties, Respondents

shall amend the document in accordance with those comments or as otherwise agreed upon by EPA, and shall submit the amended report to EPA. EPA will make the final determination as to whether the document submitted by Respondents is in compliance with the requirements of this—Consent Order. At that time when EPA determines that the report is in compliance with the requirements of this—Consent Order, EPA will transmit to Respondents a written statement to that effect. Failure to submit an amended report which adequately address EPA's comments is a violation of this Order. Respondents may dispute EPA's determinations as to a document's compliance by invoking the dispute resolution provisions of paragraph 33 of this Order.

XIII. DISPUTE RESOLUTION

33. ⁴ If Respondents disagrees, in whole or in part, with any decision or directive made by EPA pursuant to this—Consent Order, Respondents shall notify EPA in writing of ~~its~~ their objections and the basis therefore within ten (10) calendar days of receipt of EPA's decision. This notice shall set forth the specific points of the dispute, the position Respondents ~~is~~ are maintaining should be adopted as consistent with the requirements of this—Consent Order, the factual and legal bases for Respondents's position, and all matters ~~it~~ Respondents considers necessary for EPA's determination. EPA and Respondents shall then have an additional fourteen (14) calendar days from EPA's receipt of Respondents's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party and incorporated into this—Consent Order. If the

parties are unable to reach agreement within this 14-day period, EPA will promptly provide a written statement of its decision to Respondents, which shall be incorporated into this ~~Consent~~ Order. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform, or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right, in its sole discretion, to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, or to seek any other appropriate relief, or any combination of the above.

34. Respondents are not relieved of their obligation to perform and conduct activities and submit deliverables on the schedule set forth in the ~~SSI~~ Phase II Investigation Work Plan while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

35. Notwithstanding any other provisions of this ~~Consent~~ Order, no action or decision by EPA, including without limitation decisions of the Regional Administrator of EPA Region VII, or his designee, pursuant to this ~~Consent~~ Order shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondents' compliance with the requirements of this ~~Consent~~ Order.

XIV. CONFIDENTIAL BUSINESS INFORMATION

36. Respondents may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Order. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to Respondents.

XV. NOTIFICATION

37. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted to EPA pursuant to this Order shall be directed to:

Betty Berry
Waste Management Division
Superfund Branch
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone number (913) 551-7708

38. All verbal notices and written communications provided to be made to Respondents under this Order shall be directed to:

a. Peoples Natural Gas Company:

Gregory J. Benak, Esq.
Peoples Natural Gas Company of Nebraska
1815 Capitol Avenue
Omaha, Nebraska 68102
(402) 221-2021

b. Peterson Construction, Inc.:

Kenneth Peterson
Peterson Construction, Inc.
1024 South 7th Street
Council Bluffs, Iowa
()

XVI. ACCESS

39. Except as provided in paragraph 41, with respect to property not owned or controlled by Respondents, Respondents shall provide access to EPA to all property upon which any activities are being conducted or have been conducted pursuant to this Order such that EPA and its authorized representatives are able to enter and move freely about such property at all reasonable times for the following purposes:

a. Inspecting and copying records, files, photographs, operating logs, contracts and other documents relating to this response action;

b. Reviewing the status of activities being conducted pursuant to this Order;

c. Collecting such samples or conducting such tests as EPA determines are necessary or desirable to monitor compliance with the terms of this Order or to protect the public health, welfare, or the environment;

d. Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Order; and

e. Verifying data and other information submitted by Respondents pursuant to this Order.

40. Under this Order, providing access to EPA means providing access to employees of EPA and other duly authorized representatives of the EPA.

41. To the extent that work required by this ~~Consent~~ Order must be done on property not owned or controlled by Respondents, Respondents shall use ~~its~~ their best efforts to obtain site access agreements from the present owners of such property within thirty (30) calendar days of the effective date of this ~~Consent~~ Order. Such agreements shall provide access for EPA, its authorized representatives, and the Respondents or ~~its~~ their authorized representatives. All such agreements shall specify that Respondents ~~is~~ are not EPA's representatives with respect to liability associated with Site activities. Furthermore, the Respondents agrees to indemnify the U.S. Government as specified in paragraph 72 of this Order. Respondents also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents as provided in paragraph 53. As used in this paragraph, best efforts shall include, at a minimum, a certified letter from Respondents to the present owners of the property requesting access agreements to permit Respondents and EPA, including its authorized representatives, access to the property to conduct the activities required under this ~~Consent~~

Order under terms which do not require purchase or lease of the property. Respondent's best efforts shall also include providing to any off-site property owner notice prior to entry, the opportunity to collect splits or duplicates of all samples collected, results of all analyses of samples collected, reasonable compensation, and either indemnification or insurance or some other assurance of compensation for any damage to persons or property as a condition to access. Any such access agreements shall be incorporated by reference into this Consent Order. In the event any such access agreement is not obtained within this time period, Respondents shall notify EPA in writing of ~~its~~ their lack of access, the efforts ~~it~~ they made to obtain access, and an explanation of the basis therefore, e.g., inability to locate the current owner of the property, lack of response to request for access, or denial of access. In the event EPA obtains access, Respondents shall undertake work on such property in accordance with the approved Work Plan. In the event that EPA performs those tasks or activities, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such activities. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. If, after using its best efforts, as defined herein, to do so, Respondents are unable to obtain access to such property, a force majeure shall be deemed to have occurred.

42. Nothing herein is intended to limit in any way EPA's right of access under CERCLA or any other legal authority.

XVII. RECORD PRESERVATION

43. Unless otherwise permitted by EPA, each Respondent shall, without regard to any document retention policy to the contrary, preserve during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in its possession, custody or control containing information related to wastes containing hazardous substances generated, stored, treated or disposed of on the site, the release or threatened release of hazardous substances from the site or work performed pursuant to this Order. Only one copy of identical documents need be retained. Drafts of documents which are subsequently prepared in final form need not be retained in addition to the final document. After this six-year period has lapsed, Respondents shall notify EPA at least sixty (60) calendar days prior to the destruction of any such document. Respondents shall, as directed by EPA, either provide to EPA the documents or copies of such documents or retain them for an additional time period reasonably specified by EPA.

XVIII. RESERVATION OF RIGHTS

44. EPA expressly reserves all rights that it may have, including the right to disapprove work performed by Respondents pursuant to this Order and to request that Respondents perform tasks in addition to those stated in the Site Screening Plan.

45. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under CERCLA. This Order shall not be

construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law enforcement authority of the United States.

46. Notwithstanding compliance with the terms of this Order, Respondents ~~is~~ ~~are~~ are not released from liability, if any, for any actions beyond the terms of this Order. EPA reserves the right to take any enforcement action pursuant to RCRA, CERCLA or any other available legal authority for relief including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of law or this Order.

47. EPA reserves the right to revise or prepare, in whole or in part, documents required by this ~~Consent~~ Order, to undertake response action(s) to address the release or threat of release of hazardous substances at the Site at any time and to seek reimbursement from Respondents thereafter for such costs incurred by the United States.

48. EPA reserves the right to perform any portion of the work herein or any additional site characterization, feasibility study, and response/correction actions as it deems necessary to protect human health and the environment. EPA may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondents for such additional costs incurred by the United States. Notwithstanding compliance with the terms of

this Order, Respondents ~~is~~ ~~are~~ not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

49. Compliance by Respondents with the terms of this Order shall not relieve Respondents of ~~its~~ ~~their~~ obligations to comply with RCRA or any other applicable local, state or federal laws and regulations.

50. This Order is not intended to be nor shall it be construed as a permit. This Order does not relieve Respondents of any obligation to obtain and comply with any local, state or Federal permits.

51. In entering this Order on consent, Respondents waives any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs and costs incurred in complying⁴ with this Order. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA. Respondents acknowledges that ~~it has~~ ~~they have~~ freely entered into this Order and has agreed to incur, at ~~its~~ ~~their~~ own expense and without any right to reimbursement from EPA, the costs necessary to complete the work required pursuant to the terms of this Order. Respondents expressly waives all of ~~its~~ ~~their~~ rights, if any, under any statutory or legal theory, against the Hazardous Substance Response Trust Fund.

52. Respondents shall bear ~~its~~ ~~their~~ own costs and attorneys fees.

XIX. COST REIMBURSEMENT

53. Within thirty (30) calendar days of receipt of an accounting by EPA of its cost of overseeing activities conducted

pursuant to this Order, including all direct and indirect costs for EPA employee time and travel, any cost incurred on or subsequent to the effective date of this ~~Consent~~ Order under or in connection with any contract or arrangement for assistance in overseeing and reviewing the conduct of the ~~investigations~~ Phase II Investigation required herein and costs incurred while obtaining access (hereinafter "Oversight Costs"), Respondents shall remit a check in that amount payable to the Hazardous Substance Response Fund. EPA's accounting of ~~response~~ oversight costs will consist of a certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, including the following information:

a. EPA's payroll costs, including the names of the individuals charging time to the Site, the pay periods in which each individual charged time to the Site, the number of hours charged by each individual per pay period, and the payroll cost per individual per pay period;

b. EPA's travel costs, including the names of the individuals charging travel costs to this Site and the date and amount of payment of each travel claim charged to the Site;

c. EPA's indirect costs charged for regional staff time, including the individual's name, pay period, the number of hours per pay period, the indirect cost rate, and total indirect cost;

d. Contract costs, including for each such payment the amount paid, the date paid, and invoice number; and

e. the amount and date paid for any other costs.

The summary provided by EPA shall serve as basis for payment demands.

54. Respondents shall, within thirty (30) days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Checks should be made payable to the Hazardous Substances--~~Superfund~~ ~~Response Fund~~ and should include a reference to the name of the site, the site identification number HY, and the title of this Order. Checks should be forwarded to:

Mellon Bank, EPA Region VII
Superfund
FNMG Section
P. O. Box 360748M
Pittsburgh, PA 15251

55. A copy of the check should be sent simultaneously to the EPA contact identified in paragraph 37.

56. ⁴ Interest shall begin to accrue ~~thirty~~ (30) days from receipt of EPA's accounting of oversight costs at the current rate of 5.7 percent per annum for the period October 1, 1991, through September 30, 1992. Interest will be compounded annually. On October 1 of each subsequent year, any unpaid balance will begin accruing interest at the new rate to be determined by the Secretary of the Treasury.

57. Respondents agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this--~~Consent~~ Order. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the

burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this ~~Consent~~ Order.

58. EPA reserves the right to bring an action against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs not reimbursed by Respondents, including the oversight costs incurred by the United States related to this Order, as well as any other past and future costs incurred by the United States in connection with the ~~compressor stations identified in this Order~~ Site.

XX. OTHER CLAIMS

59. Nothing in this ~~Consent~~ Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XXI. OTHER APPLICABLE LAWS

60. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations, including, but not limited to, any permitting or licensing requirements.

B- All reports, plans, specifications, and schedules submitted pursuant to this Order are, upon approval by EPA, incorporated into this Order. Unless otherwise excused by law, any noncompliance

with the requirements of such EPA-approved reports, plans, specifications, or schedules shall be considered a failure to achieve compliance with the requirements of this Order.

XXII. PENALTIES FOR NONCOMPLIANCE

61. Respondents ~~are~~ ~~is~~ hereby advised that, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, civil penalties of not more than \$25,000 per day for each day during which a violation continues may be assessed for violations of this ~~Consent~~ Order, provided that upon timely payment of a stipulated penalty for a specified violation, the stipulated penalty is the exclusive civil penalty for that violation.

62. Respondents ~~are~~ ~~is~~ further advised that, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), any person who is liable⁴ for a release or threat of release of a hazardous substance and who fails without sufficient cause to provide properly the removal or remedial actions specified in this Order may be liable to the United States for punitive damage in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to take proper action.

XXIII. STIPULATED PENALTIES

63. ~~Except when performance is delayed or prevented as provided in paragraph 29 or when performance is specifically excused by EPA, for~~ ~~For~~ each day that the Respondents fails to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality or otherwise fail to perform in accordance with the requirements of this Order, Respondents shall

be liable for stipulated penalties. Such penalties begin to accrue on the day ~~after that~~ performance is due or the day a violation occurs, and extend through the period of ~~completion or~~ correction. Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA. EPA may, in its sole discretion, waive or suspend any stipulated penalties, or the accrual of such penalties, due to it under this Section based upon equitable considerations.

64. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents shall further pay a handling charge of 1 percent to be assessed at the end of each thirty-one (31) day period and a 6 percent per annum penalty charge to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

65. Respondents shall make all payments by forwarding a check to:

Mellon Bank, EPA Region VII
Superfund
FNMG Section
Post Office Box 360748M
Pittsburgh, PA 15251

Checks should identify the name of the site, the site identification number, the account number, and the title of this

Order. A copy of the check and/or transmittal letter shall be forwarded to the EPA Project Coordinator.

66. For ~~submittal of the Phase II Investigation Report~~ ~~following major deliverables~~, stipulated penalties shall accrue in the amount of ~~of \$500.00~~ \$250.00 per day, per violation, for the first seven (7) days of noncompliance; ~~\$1000.00~~ \$500.00 per day, per violation, for the 8th through ~~14th day of noncompliance;~~ ~~\$1000.00~~ per day, per violation, for the 15th day through the 30th day; and ~~\$5000.00~~ \$2,500.00 per day, per violation, for all violations lasting beyond thirty (30) days.

~~a. Screening Site Investigation Work Plan~~

~~b. Screening Site Investigation Report.~~

67. For failure to submit monthly progress reports as prescribed in this ~~Consent~~ Order stipulated penalties shall accrue in the amount of ~~\$150.00~~ \$75.00 per day for the first through seventh days of noncompliance; and ~~\$500.00~~ \$250.00 per day for the eighth day and each succeeding day of noncompliance thereafter.

68. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under paragraph 33, herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents does not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondents prevail upon resolution, the disputed penalties need not be paid.

69. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim

deliverable shall cease to accrue on the date of such decision by EPA.

70. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents failure to comply with this ~~Consent~~ Order including, but not limited to, conduct of all or part of the ~~SSI~~ Phase II Investigation by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this ~~Consent~~ Order.

71. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this ~~Consent~~ Order, nor shall payment of said penalties relieve Respondents of the responsibility to comply with this ~~Consent~~ Order.

XXIV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

72. Respondents agrees to indemnify and save and hold the United States Government, its agencies, departments, agents and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents or its ~~their~~ officers, employees, receivers, trustees, agents, contractors, subcontractors or assigns, in carrying out any activities pursuant to this Order. EPA is not and shall not be represented to be a party to any contract entered into by Respondents to carry out activities pursuant to this Order; provided, however, that Respondents shall be under no duty to indemnify the United States for claims or causes of action arising

from or on account of negligent, willful or intentional acts or omissions of the United States, its officers, agents, employees or any other person acting on its behalf. Nothing herein is intended to or shall be construed as extending the liability of the United States beyond that provided for under Federal law.

XXV. DISCLAIMERS

73. The only judicial or administrative proceeding in which EPA or Respondents may use this Order is one brought by or on behalf of EPA either to enforce the obligations of Respondents under this Order or to collect penalties for non-compliance with the terms of this order, or both, or one by Respondents to seek contribution or recovery of response costs from any person, other than the United States, who is liable or potentially liable to Respondents, or to seek indemnification from any person, other than the United States, including the Hazardous Substance Response Trust Fund, with respect to response activities which Respondents ~~has~~ ~~have~~ agreed to undertake pursuant to this ~~Consent~~ Order. This ~~Consent~~ Order shall not be used in any other legal or administrative proceeding as evidence of a violation of law or as an admission against Respondent's or EPA's interests. This ~~Consent~~ Order shall not constitute or be construed as any waiver by or estoppel against Respondents with respect to any right, cause, claim or defense it may have in any proceeding against any other person or entity, except the United States to the extent set forth herein, including the Hazardous Substance Response Trust Fund, concerning liability for the releases which are the subject of this ~~Consent~~ Order, or indemnification, contribution, reimbursement or

cost recovery of any expenses, including reasonable attorneys' fees, incurred by Respondents hereunder. Respondents expressly reserves all-its ~~their~~ rights, causes, claims and defenses against any such persons and entities, except the United States to the extent set forth herein, including the Hazardous Substance Response Trust Fund, concerning any such liability, indemnification, contribution, reimbursement and cost recovery.

74. Respondent~~s~~ consent to EPA jurisdiction and authority to issue this-Consent Order is solely for the purposes of entry and enforcement of this-Consent Order. Said consent shall not constitute any admission by Respondents of any liability with respect to these matters, conditions on or surrounding the ~~compressor stations~~ Site or any acts or omissions by any person concerning the ~~compressor stations~~ Site. By signing this-Consent Order, Respondents does not waive, except for-its ~~their~~ consent to jurisdiction for purposes of entry and enforcement of this-Consent Order, including actions for penalties for non-compliance with the terms of this-Consent Order, any claim or defense that-it ~~they~~ might have raised to this-Consent Order, or that-it ~~they~~ might raise in any other judicial or administrative proceeding brought by EPA, including enforcement actions involving the dispute resolution provisions of paragraph 33 of this-Consent Order, any other governmental agency or any other person.

XXVI. NOTICE TO THE STATE

75. EPA has notified the State of Iowa as to the issuance of this Order.

XXVII. MODIFICATION

76. This ~~Consent~~ Order may be modified by the mutual agreement of ~~both~~ all parties. Any such amendments shall be in writing and shall be signed by representatives of ~~both~~ all parties. Unless otherwise provided for in the amendment, the effective date of any such modification shall be the date on which the written agreement of modification has been signed by ~~both~~ all parties.

XXVIII. EFFECTIVE DATE

77. This Order is effective immediately upon receipt of a fully executed copy thereof by Respondents and all times for performance of actions pursuant to this Order shall be calculated from that date.

XXIX. TERMINATION

78. This ~~Consent~~ Order shall terminate when Respondents demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this ~~Consent~~ Order, including any mutually agreed additional work, and payment of ~~response and~~ oversight costs and any stipulated penalties due, have been performed and EPA has approved Respondent's certification. This notice shall not terminate Respondent's obligation to comply with paragraphs 43, 78, (Record Preservation), 44, 45, 46, 47, 48, 49, 51, 52 (Reservation of Rights) and 53 (Cost Reimbursement) of this ~~Consent~~ Order.

79. Respondent's certification of completion shall be signed by a responsible official representing each Respondent. This

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representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is, to the best of my knowledge and belief, after diligent inquiry, true, accurate and complete." For purposes of this ~~Consent~~ Order, a responsible official is a corporate officer who is in charge of a principal business function.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For the United States Environmental Protection Agency, Region VII

Daniel J. Shiel
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

Date

For Peoples Natural Gas Company

For Peterson Construction, Inc.

Date

Date

IT IS SO ORDERED.

David A. Wagoner
Director, Waste Management Division
U.S. Environmental Protection Agency
Region VII

Date